

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
October 24, 2006 Session

STATE OF TENNESSEE v. GREGORY N. YORK

**Direct Appeal from the Criminal Court for Campbell County
No. 12525 E. Shayne Sexton, Judge**

No. E2005-02642-CCA-R3-CD - Filed February 7, 2007

The defendant, Gregory N. York, appeals from the suspension of his driver's license for two years as a result of violating the implied consent law. The trial court used the defendant's prior Driving Under the Influence (D.U.I.) convictions that were over ten years old to enhance the suspension from one year to two years. The defendant urges this court to impose the ten-year limitation contained in the D.U.I. statute to the implied consent statute to bar the use of any prior D.U.I. conviction more than ten years old. We decline this opportunity and affirm the judgment from the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Michael G. Hatmaker, Jacksboro, Tennessee, for the appellant, Gregory N. York.

Robert E. Cooper, Jr., Attorney General and Reporter; David E. Coenen, Assistant Attorney General; William Paul Phillips, District Attorney General; and Scarlett Ellis and Tracy Jenkins, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The facts in this case are undisputed. In February 2005, the defendant refused to submit to a blood alcohol test and signed an implied consent form, refusing to take the test after a deputy read him the form. The defendant had two prior D.U.I. convictions in Anderson County, the most recent in 1993 and the oldest in 1988. The defendant was found not guilty of D.U.I., but he was found guilty of violation of the implied consent statute. The trial court suspended the defendant's drivers licence for two years pursuant to Tennessee Code Annotated section 55-10-406 (a)(4)(A)(ii)(Supp. 2005). The defendant argued then, as he does now, that the trial court should be limited to prior D.U.I. convictions that are less than ten years old to enhance the drivers license suspension. The State argues that the plain, unambiguous language of the statue contains no time limitation for use of prior D.U.I. convictions. We agree with the State.

Tennessee Code Annotated section 55-10-406(a)(4)(A) provides:

If such person, having been placed under arrest and then having been requested by a law enforcement officer to submit to either or both such tests, and having been advised of the consequences for refusing to do so, refuses to submit, the test or tests to which the person refused shall not be given, and such person shall be charged with violating this subsection (a). The determination as to whether a driver violated the provisions of this subsection (a) shall be made at the same time and by the same court as the court disposing of the offense for which such driver was placed under arrest. If the court finds that the driver violated the provisions of this subsection (a), except as otherwise provided in this subdivision (a)(4), the driver shall not be considered as having committed a criminal offense; however, the court shall revoke the license of such driver for a period of:

(i) One (1) year, if the person does not have a prior conviction for a violation of §§ 55-10-401, 39-13-213(a)(2), 39-13-218, 39-13-106, or 55-10-418 in this state, or a similar offense in any other jurisdiction;

(ii) Two (2) years, if the person does have a prior conviction for an offense set out in subdivision (a)(4)(A)(i).

The plain, unambiguous language of Tennessee Code Annotated section 55-10-406 (a)(4)(A)(ii) contains no time limitation for use of prior D.U.I. convictions. The defendant contends, though, that because the D.U.I. statute, T.C.A. § 55-10-403(a)(3), bars the use of sentencing of D.U.I. convictions ten or more years old, we should imply a similar limitation in the implied consent statute. It is the distinct province of the legislature, not this court, to impose a time limitation barring the use of a prior D.U.I. conviction. The trial court properly revoked the defendant's drivers license for two years because the defendant clearly had a prior D.U.I. conviction.

Conclusion

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOHN EVERETT WILLIAMS, JUDGE